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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1999-347 (9-600) / 98-1760
Filed December 13, 1999

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT DEAN BROCKWAY,
Defendant-Appellant.

Appeal from the Iowa District Court for Louisa County, Mark Kruse, District Associate Judge.

Brockway appeals from his conviction and sentence, following a jury trial, for eluding or attempting to elude a pursuing law enforcement vehicle. **AFFIRMED.**

James A. Sinclair and Jeffrey M. Weber of Sinclair & Associates, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and David L. Matthews, County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

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HUITINK, P.J.

I. Background Facts and Proceedings.

In a two-count trial information the State charged Brockway with eluding or attempting to elude a pursuing law enforcement vehicle and carrying weapons. These charges followed attempts by Louisa County sheriff's deputies to stop a speeding pickup truck owned by Brockway.

The record indicates Brockway's vehicle was traveling sixty miles per hour in a thirty-five-mile-per-hour speed zone. The driver of the vehicle failed to stop despite efforts of pursing officers to signal the driver with lights and sirens. The pursuing deputy temporarily lost sight of the vehicle after it left the roadway and entered a farm field. When the vehicle was later discovered, the driver could not be found. Upon approaching the vehicle, officers noted the keys were still in the ignition. The officers also saw a Casey's brand pizza box and two guns in the cab of the truck. After checking the license plate number, officers determined the truck was registered to Brockway. A call to a local Casey's store verified Brockway's purchase earlier that evening of the pizza found in the truck. Based on this evidence, officers concluded Brockway was the driver of the truck and charged him with these offenses.

At trial Brockway testified he did not see the deputy signaling him to stop and did not realize that he was being pursued when he parked his truck in a field near his home. He also testified that he placed the guns in the truck for safekeeping overnight and simply forgot to take his pizza with him when he left the truck to go home.

A jury convicted Brockway of eluding a law enforcement vehicle and acquitted him on the offense of carrying weapons. As a result, Brockway was sentenced to a term in the county jail, probation, and a $500 fine. On appeal, Brockway argues he was denied his constitutional right to effective assistance of counsel. He cites counsel's failure to file a motion to suppress the evidence seized following the warrantless search of his vehicle.

II. Standard of Review.

We review claims of ineffective assistance of counsel de novo. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998).

III. Ineffective Assistance of Counsel.

Brockway contends his attorney was ineffective for not filing a motion to suppress the items deputies discovered in the cab of his truck. He claims his identification as the driver was based on the unconstitutional warrantless search of his truck and seizure of the Casey's pizza box.

Generally, ineffective assistance of counsel claims are preserved for postconviction proceedings to allow trial counsel an opportunity to respond. *State v. Mulder*, 313 N.W.2d 885, 890 (Iowa 1981); *State v. Nebinger*, 412 N.W.2d 180, 191-92 (Iowa App. 1987). We depart from this preference if the record on direct appeal is sufficient to evaluate the merits of a defendant's ineffective assistance of counsel claim. *Id.* If not, we preserve the claim for postconviction proceedings so the facts may be developed. *State v. Koenighain*, 356 N.W.2d 237, 238 (Iowa App. 1984).

This also gives the allegedly-ineffective attorney the opportunity to explain his or her conduct. *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978).

Based on our review of the record, we conclude Brockway has failed to show counsel breached an essential duty. The State correctly cites exigent circumstances attending the high speed chase of Brockway's vehicle and its apparent abandonment as justification for the warrantless search of his truck and resulting seizure of evidence found in the cab. *See State v. Edgington*, 487 N.W.2d 675, 678 (Iowa 1992). Because there is no merit to Brockway's suppression argument, counsel had no duty to file a motion asserting it. *State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996). We therefore affirm.

AFFIRMED.